

IN THE MATTER OF License No. 344057  
Issued to: Arvin W. CALLAWAY, BK-035606

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1676

Arvin W. CALLAWAY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 31 January 1966, an Examiner of the United States Coast Guard at New York, N. Y., suspended Appellant's license for 2 months upon finding him guilty of negligence. The specifications found proved alleged that while serving as master of the United States SS SEATRAN GEORGIA under authority of the license above described, on or about 11 March 1965, Appellant allowed his vessel to be navigated contrary to law in circumstances under which it was the burdened vessel in a crossing situation in New York Harbor with respect to SS CANDY.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of several witnesses and several documents, including voyage records.

In defense, Appellant offered in evidence his own testimony, several documents, and transcripts of testimony of other witnesses given in other proceedings.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending Appellant's license for a period of two months.

The entire decision was served on 1 February 1966. Appeal was timely filed on 1 March 1966, and was perfected on 3 June 1966.

FINDINGS OF FACT

On March 11, 1965, Appellant was serving as master of SEATRAN GEORGIA at a time when the vessel was entering the port of New

York. The vessel, sailing on enrollment, had aboard a Federally licensed pilot, pursuant to 46 U.S.C. 364. This pilot was also a "Sandy Hook" pilot, qualified to pilot U. S. registered and foreign vessels under local law.

At 0537, on the morning of 11 March 1965, SEATRIN GEORGIA collided with the Chinese SS CANDY in the main ship channel above the Narrows. SEATRIN GEORGIA, a burdened vessel in a crossing situation, had failed to keep clear while attempting a crossing contrary to the rules. No danger signal was blown at any time.

Several minutes prior to the collision, and before the other vessel had been seen at anchor in the anchorage, Appellant had left the bridge of SEATRIN GEORGIA. He did not notify anyone that he was leaving, nor did he advise where he could be found.

No one notified or attempted to notify Appellant of the situation that developed with respect to the privileged CANDY.

When Appellant returned to the bridge, SEATRIN GEORGIA was in the jaws of a collision which could not be avoided by the combined actions of both vessels.

#### BASES OF APPEAL

Appellant urges two reasons to reverse the findings of the Examiner. The first, he labels his "principal" agreement; the other he calls his "secondary" argument. Both are set out below in "Opinion," where they are discussed.

APPEARANCE: Kirlin, Campbell and Keating, New York, N. Y., by  
John F. Gerity, Esq. and Richard H. Brown, Esq.

#### OPINION

The principal point of Appellant is that since he was not present in the wheelhouse during critical minutes prior to the collision he is not chargeable for allowing his vessel to be navigated in violation of the Rules of the Road.

In summary, it may be repeated that Appellant left the wheelhouse of SEATRIN GEORGIA just before it passed under the bridge over the Narrows, New York, before CANDY had been sighted, and did not return to the wheelhouse until one minute before the collision. When Appellant left the wheelhouse he left with no notice to the pilot or the mate, and without leaving any instructions.

When he returned to the wheelhouse, it is argued, it was too late for him to have done anything to avert collision.

Thus, it is said, even if the pilot of SEATRIN GEORGIA was at fault, Appellant was not chargeable with error since he had no knowledge of the presence of the other ship or of the maneuverings of the vessels prior to his return to the bridge.

It may be conceded at the outset of this discussion that Appellant was not charged with a specific fault of being absent from the navigation bridge, but only with allowing his pilot to navigate the vessel contrary to law.

The question then is this: It is necessary for a master to have actual knowledge of a fact situation and of the actions of his pilot before it can be said that he "allowed" his vessel to be navigated in violation of the Rules of the Road? Thus posed, the question seems to answer itself in the context of this case.

SEATRIN GEORGIA was navigating in one of the world's busiest harbors and Appellant had ample notice of the nature of the waters and of the Rules to be followed. At a time when the vessel was in a body of water aptly named "The Narrows," Appellant chose to leave the navigating bridge with no notice to anyone. He was thus "allowing" the pilot to do anything the pilot wanted. The question is not whether he could have had confidence in the pilot based on past experience. The fact is that he "allowed" to happen anything that could happen and everything that did happen.

"Actual knowledge" such as to permit use of the word "allow" in criminal indictments is not seen needed here as to the presence of the other vessel. Appellant had actual knowledge of the hazards and had actual knowledge of the Rules.

## II

Appellant's secondary argument is that there was no crossing situation in the first place, and, therefore, since the pilot could not have violated the "starboard hand" rule, Appellant cannot, under any circumstances, be held to have "allowed" a violation of that rule or any other.

The Examiner has specifically found that the red light of CANDY was not seen aboard SEATRIN GEORGIA until the vessels were one half mile apart, when CANDY bore about three points on GEORGIA's starboard bow. He did not find fault in a failure to have seen the red light earlier. He found also that the sighting of the red light was only two minutes before collision.

There is some difficulty encountered with the facts in this case. The Examiner found as fact that CANDY was on a heading of northwest (about 315/D/ true) while anchored. (finding No. 12). He found that when CANDY weighed anchor she probably turned right. (Finding No. 21)f. At the same place, and in his "opinion", the Examiner hold it "probable" that CANDY came right, while heaving the port anchor, to a heading of North (000/D/t). Whether it was probable, and therefore to be inferred, that CANDY turned forty five degrees while weighing anchor, need not be decided.

If it be assumed that CANDY was on 000/D/t when first underway, its port light would have been visible in the sector from 247.5/D/t - 000/D/t. This was fourteen minutes before collision.

CANDY used no power for the next four minutes, but then started to maneuver. In Finding 12 the Examiner finds that a period of ten minutes elapsed from the weighing of anchor to arrival on course 275/D/t, which would have occurred four minutes before collision. Thus, in a period of six minutes CANDY came, according to findings, eighty five degrees to the left.

It is recognized that the rate swing would be slower at the beginning and at the end, when the ship was being steadied, but for the purpose of ascertaining the meaning of these facts, to use the average rate of swing of fourteen degrees per minute creates no significant error.

It is obvious that CANDY's red light was visible to SEATRAN GEORGIA not only when CANDY was on a heading of 275/D/t but for some time before that. It is also seen that when CANDY swung left past her original heading at anchor, 315/D/t, the time was about seven minutes before collision, and the visibility sector of the red light was from 315/D/t back to 203/D/T. It is also obvious that seven minutes before collision SEATRAN GEORGIA was well within that sector.

The Examiner finds, without criticism, that watchers from SEATRAN GEORGIA saw the red light of CANDY only three minutes before collision. The Examiner himself found that CANDY was on its final heading for a minute before that, and I construe his findings as meaning that the red light was in fact visible up to four minutes before it was seen.

The best that can be said of SEATRAN GEORGIA's pilot is that he saw a red light of a vessel on his starboard bow three minutes before collision when he should have seen it more than four minutes, and up to seven minutes, before collision.

He did not know that he was under obligation to stay out of

the way of another vessel until it was a half mile away, according to his own testimony, when he should have been aware of his obligation relatively long before.

Appellant here cannot be heard to claim sole fault on the part of the privileged vessel when his own vessel was navigated so poorly.

It is no defense that no one saw the light until it was too late. The light was there to be seen.

#### CONCLUSION

The pilot of SEATRAN GEORGIA violated the "starboard hand" rule. Appellant, as master of the ship, allowed him to do so.

The specifications found proved by the Examiner were proved by substantial evidence. The Examiner's order was appropriate. However, since in the case of the pilot of SEATRAN GEORGIA I found it appropriate to remit the suspension of the pilot's license, the same consideration will be applied here. (See Decision on Appeal No. 1670).

#### ORDER

The Decision of the Examiner, entered at New York, N. Y., on 31 January 1966, is AFFIRMED. His order is APPROVED, but the suspension is remitted into the interests of equity.

W. J. SMITH  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 4th day of January 1968.

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